

Mac VerStandig

From: THOMAS KAPUSTA <tkapusta@aol.com>
Sent: Wednesday, January 3, 2024 11:49 AM
To: Mac VerStandig; Mac VerStandig
Cc: Wencil Sarah (USTP)
Subject: Re: In re Drain Services - Objection to Amended Debtor Plan

Dear Attorney VerStandig:

Due to the unpaid administrative expense payment for trustee fees and expenses, this is to advise I intend to object to the amended plan filed by the Debtor.

Thomas Kapusta
Subchapter V Trustee
tkapusta@aol.com

On Friday, December 29, 2023 at 07:28:31 PM CST, THOMAS KAPUSTA <tkapusta@aol.com> wrote:

Dear Attorney VerStandig:

I am still not seeing the administrative expense payment for trustee fees. Is the debtor unable to make payment? I believe some creditors who were objecting to the previous plan questioned debtor's cash flow. Are you acknowledging that concern? Please advise.

Thomas Kapusta
Subchapter V Trustee

On Friday, December 29, 2023, 7:07 PM, Mac VerStandig <mac@dakotabankruptcy.com> wrote:

Counsel,

Attached is Drain Services' bank ledger, as of this evening. I am told there is a \$7,300.00 payment currently incoming, marking the downpayment for a project set to begin next week.

Enjoy the holiday weekend.

Thanks,

Maurice "Mac" VerStandig, Esq.

The Dakota Bankruptcy Firm

Suite B PMB 24

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mac@dakotabankruptcy.com

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From: Mac VerStandig

Sent: Friday, December 22, 2023 9:39 PM

To: Kent.rockstad@usdoj.gov; tracykennedy@northdakotalaw.net; John Schroeder
<JSchroeder@northdakotalaw.net>; THOMAS KAPUSTA <tkapusta@aol.com>; Wencil Sarah (USTP)
<sarah.j.wencil@usdoj.gov>

Subject: RE: In re Drain Services - Weekly Bank Report

Counsel,

Attached please find Drain Services' bank ledger as of a short time ago.

Best wishes to each of you for a wonderful, joyous, and non-working holiday.

Thanks,

Maurice "Mac" VerStandig, Esq.

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From: Mac VerStandig

Sent: Tuesday, December 19, 2023 1:50 AM

To: Kent.rockstad@usdoj.gov; tracykennedy@northdakotalaw.net; John Schroeder
<JSchroeder@northdakotalaw.net>; THOMAS KAPUSTA <tkapusta@aol.com>; Wencil Sarah (USTP)
<sarah.j.wencil@usdoj.gov>

Subject: RE: In re Drain Services - Weekly Bank Report

Counsel,

Attached, please find Drain Services' bank ledger through Monday.

One item of note: Much as there were oddities with the reporting order of items on the petition date, there are also some oddities here. I am informed the two \$5k deposits hit the account *before* the Choice payment was made; as such, while it appears the account briefly dipped into the red, there were always funds/credits sufficient to keep the balance positive.

Thanks,

Maurice "Mac" VerStandig, Esq.

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From: Mac VerStandig

Sent: Monday, December 4, 2023 12:41 AM

To: Kent.rockstad@usdoj.gov; tracykennedy@northdakotalaw.net; John Schroeder
<JSchroeder@northdakotalaw.net>; THOMAS KAPUSTA <tkapusta@aol.com>; Wencil Sarah (USTP)
<sarah.j.wencil@usdoj.gov>

Subject: RE: In re Drain Services - Weekly Bank Report

Counsel,

Attached please find Drain Services' bank ledger through midday today. The one item of note from my review is a transfer to Ms. Cameron; I am informed this is the payment of Mr. Cameron's wages, which he elected to transfer to his wife's account. I am also told the debtor is holding a check for \$10k, which is a deposit on a new job in Mankato; the check should be deposited in the coming days.

Thanks,

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From: Mac VerStandig
Sent: Tuesday, November 21, 2023 4:32 AM
To: Kent.rockstad@usdoj.gov; tracykennedy@northdakotalaw.net; John Schroeder
<JSchroeder@northdakotalaw.net>; THOMAS KAPUSTA <tkapusta@aol.com>; Wencil Sarah (USTP)
<sarah.j.wencil@usdoj.gov>
Subject: RE: In re Drain Services - Weekly Bank Report

Attached is the Drain Services bank ledger as of this morning. I am also attaching the one new check image.

On an unrelated note: Best wishes to each of you for an enjoyable Thanksgiving. Whether spent watching parades, listening to an old Arlo Guthrie song, gathering with family, or watching football while eating smoked brisket and McDonald's apple pies (which, yes, was a tradition for my kid brother and me for a number of years before either of us got married), I hope you have a joyous and warm holiday. And, at risk of being entirely too mawkish, I will confess that having the opportunity to meet each of you over the past year, and being so warmly embraced by the legal community in Fargo, is high on the list of things for which I find myself being grateful this holiday season.

Thanks,

Maurice "Mac" VerStandig, Esq.

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From: Mac VerStandig
Sent: Sunday, November 12, 2023 1:09 PM
To: Kent.rockstad@usdoj.gov; tracykennedy@northdakotalaw.net; John Schroeder
<JSchroeder@northdakotalaw.net>; THOMAS KAPUSTA <tkapusta@aol.com>; Wencil Sarah (USTP)
<sarah.j.wencil@usdoj.gov>
Subject: RE: In re Drain Services - Weekly Bank Report

Counsel,

Attached, please find the Drain Services bank ledger, as of a short time ago. I am also attaching a copy of the one check, which was in the nature of a payroll check, issued in the past week.

You will notice the balance is lower; this is partially on account of Choice having received its adequate protection payment on Friday. If the current plan confirmation schedule holds, this should be the final adequate protection payment.

I also received some questions about the last ledger and am inclined to share responses to the group at large, so as to ensure everyone has relatively equal access to pertinent data pursuant to the cash collateral order. The responsive notes are as follows:

- The three November 3, 2023 Great Wolf Lodge transactions are travel/entertainment related to project evaluations in Mankato and Woodbury, MN. The \$200 hotel item is a hold that should be released.
- The November 3, 2023 Marathon expense is a gas charge correlative to the foregoing.
- The \$3k transfer to Mr. Cameron on November 3 was for his ordinary wages.
- The \$465.45 expense on November 3, 2023 was for Thorgood work boots and winter gear.
- Mr. Cameron is without access to the Self Lender account, which was closed on November 8, 2023. Consistent with the cash collateral order, if there is interest in obtaining further information on this front, please let me know and I will file a motion to take the Rule 2004 examination of the counterparty.
- The \$1,499.22 insurance expense on October 30, 2023 is vehicle insurance for the debtor.
- The \$2,876.10 insurance expense on October 24, 2023 is general liability insurance for the debtor.
- The two October 23, 2023 expenses (in the amounts of \$173.90 and \$46.85) were inadvertent personal uses of the wrong debit card.

On the last item, there is some technical constraint in asking Mr. Cameron to return the funds, since he is personally a debtor in bankruptcy. However, in lieu of "deducting" them from his next payroll (which would be a collection effort), he has indicated a willingness to take a one-time pay reduction in a sum equal to \$220.75, so as to ensure the debtor need not file a second claim against his personal bankruptcy estate.

Finally, addressing some more generalized questions we have received:

- The debtor does not meaningfully distinguish between WIP and A/R. The terms on most projects are a 50% payment upfront and a 50% payment at completion (though this is malleable on some larger projects). There are no written contracts/bids/agreements for most projects and, as such, there is not a clean mechanism of asserting how much is earned, and when it is earned, without making some legal assumptions. My inclination is to posit that these are essentially oral executory contracts, with funds earned upon receipt and setoff by a performance obligation until such a time as a project crosses the 50% completion threshold (at which point there would be an evolving payment obligation in favor of the debtor). But it merits stressing that there is not always a precise “halfway” point on these projects, much less one that is observed by the parties.
- The debtor expects to be paid the remaining 50% on completion of projects but normally extends net 30 terms.
- Amounts received from project counterparties are normally deposited in a relatively expedient manner and, as such, visible on bank statements. There was an issue with an illegible check a week or so ago that has delayed one deposit, but I am informed this is the exception to the rule.
- I have asked the debtor to produce contact information for the counterparties on all extant projects and will relay the same once it is received.

As always, feel free to call or e-mail if you have any questions or wish to discuss any/all of this. And apologies for not circulating this on Friday – I will confess to having ducked away from work early in favor of a social gathering that was every bit the stuff of Kaylee Bell lyrics.

Thanks,

Maurice “Mac” VerStandig, Esq.

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From: Mac VerStandig

Sent: Friday, November 3, 2023 10:13 PM

To: Kent.rockstad@usdoj.gov; tracykennedy@northdakotalaw.net; John Schroeder
<JSchroeder@northdakotalaw.net>; THOMAS KAPUSTA <tkapusta@aol.com>; Wencil Sarah (USTP)
<sarah.j.wencil@usdoj.gov>

Subject: RE: In re Drain Services - Weekly Bank Report

Counsel,

Attached, please find the Drain Services bank ledger, as of this evening. I am told a \$12,250.00 deposit is shortly forthcoming via mobile deposit, but it is not yet reflected on the account ledger.

Best wishes for an enjoyable weekend.

Thanks,

Maurice "Mac" VerStandig, Esq.

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From: Mac VerStandig

Sent: Tuesday, October 31, 2023 1:07 PM

To: Kent.rockstad@usdoj.gov; tracykennedy@northdakotalaw.net; John Schroeder
<JSchroeder@northdakotalaw.net>; THOMAS KAPUSTA <tkapusta@aol.com>; Wencil Sarah (USTP)
<sarah.j.wencil@usdoj.gov>

Subject: RE: In re Drain Services - Weekly Bank Report

Counsel,

To follow up, I am attaching the various check images indicated on the ledger, alongside a refreshed ledger pulled this morning.

One item of note: the new ledger shows an auto-debited insurance expense. This is not an insurance policy for the benefit of the debtor and, as such, ought not be paid from the debtor's funds. I am aware of this because Mr. Cameron brought it to my attention, indicating appropriate concern and an intention to promptly seek to have the payment unwound.

Thanks,

Maurice "Mac" VerStandig, Esq.

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From: Mac VerStandig
Sent: Friday, October 27, 2023 11:01 PM
To: Kent.rockstad@usdoj.gov; tracykennedy@northdakotalaw.net; John Schroeder
<JSchroeder@northdakotalaw.net>; THOMAS KAPUSTA <tkapusta@aol.com>; Wencil Sarah (USTP)
<sarah.j.wencil@usdoj.gov>
Subject: RE: In re Drain Services - Weekly Bank Report

Counsel,

Attached is the ledger for this week's transactions.

While the debtor remains within the cash collateral budget, there is a large transaction for the acquisition of a piece of equipment. It is my understanding this was necessitated by a sub-contractor indicating it would not be able to perform on a job, for which the sub-contractor's anticipated compensation was otherwise outside the temporal scope of the budget. It is certainly the debtor's position that replacement liens would necessarily attach to this asset, but I am also working with the debtor to address the degree to which this transaction may require judicial approval and, if so, the optimal means of securing such approval. It is my understanding the asset *can* be returned, with the funds paid being reimbursed, but that doing so may have certain deleterious impacts on the debtor's business and professional relationships.

I will be working over the weekend if anyone wishes to discuss this issue (or any of the other items on the ledger). I am due to travel to Fargo early Monday, but should be available most of the afternoon. My cell phone number is (240) 351-6442.

Thanks,

Maurice "Mac" VerStandig, Esq.

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From: Mac VerStandig
Sent: Friday, October 20, 2023 8:36 PM
To: Kent.rockstad@usdoj.gov; tracykennedy@northdakotalaw.net; John Schroeder
<JSchroeder@northdakotalaw.net>; THOMAS KAPUSTA <tkapusta@aol.com>; Wencil Sarah (USTP)
<sarah.j.wencil@usdoj.gov>
Subject: In re Drain Services - Weekly Bank Report

Counsel,

Per the agreement placed on the record at the cash collateral hearing this week, attached please find a PDF showing the various activities in the debtor's bank account from the petition date forward. As promised, this was retrieved by having the debtor furnish me with the username/password for the account

Thanks,

Maurice "Mac" VerStandig, Esq.

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